IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 342 OF 1995.

Dashrath Sakharam Sutar,
Residing at Sutarwadi, Pashan,
Opposite Vithoba Mandir, Pune. ..Appellant
(Orig. accused No.1)

V/s.

The State of Maharashtra .. Respondent.

Shri A.B. Vagyani for the appellant.

Shri D.R. More, A.P.P. for the Respondent/State.

CORAM : S.S. PARKAR, &
ANOOP V.MOHTA, JJ.

DATE : 8TH APRIL, 2005.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. The present appeal by the appellant, as he has been convicted, under Section 302 of Indian Penal Code (IPC) and sentenced to undergo imprisonment for life.

2. The appellant-accused No.1 and one Pralhad-accused No.2 were charged and tried jointly for committing the murder of one Chandrakant Parshuram Bajare (the deceased). As per the prosecution, accused No.2, being friend, used to visit the house of the deceased. The deceased had advanced the loan to accused No.2 for purchasing autorickshaw and also for the marriage of his daughter, which remained unpaid.

Accused No.2, induced the appellant, to commit the murder of the deceased. The appellant was unemployed. Accused No.2, had promised an employment in return. The appellant on such inducement and promise on 30/1/1992, at about 11.00 p.m., in front of Chankya Housing Society, near Deep Bunglow square, Pune, beat the deceased with fists and kicks. The appellant also gave blows of stones on his head, after removing the clothes of the deceased. The deceased was unconscious, because of the head injuries by the stones. This incident was witnessed by P.W. 2, Vishwas Chavan, who was sitting along with Shivaji, P.W. 3 near bonfire beside the bunglow of Mr. Shirole. At the relevant time, P.W.3 went out for urination, but he immediately returned and informed about the on going fight. P.W. 2 and P.W. 3 rushed towards the place of the occurrence. One Jekab was also standing there. They saw one bicycle beside the road and one man was beating another man. The victim fallen on the ground, was having a black pant and a white shirt and the assailant was having white shirt and white pyjama and was bald. They saw that the assailant was hitting with fists and kicks, then he took out the clothes of the deceased and assaulted with the stones. As other persons also came near the place, the

assailant ran away on the bicycle. Both these witnesses, however, at the relevant time could not see the face of the assailant.

3. On 31/1/1992 at about 7.50 a.m. Maruti Hajare, PSI, P.W. 4, received a message, that an injured person lying in front of Chankya Housing Society, was taken to Sasoon Hospital, Pune. The injured was in the emergency ward. P.W. 4 PSI, therefore, went to the spot of incident. The spot panchanama was prepared (Exh.9). The clothes, slippers and driving licence of the deceased were seized. The blood stained stones were also seized. Articles 1 to 8 are placed on the record. The first information report (F.I.R.) Exh.17 was lodged. The report, Exh.18 was also sent to the police station. The offence was registered at Cr.No. 45/1992. The statement of P.W. 1 was recorded on that day. The further investigation thereafter,was carried out by PSI Mundhe (P.W.,9). On 1st February, 1992, Mundhe, examined 5 witnesses, including Vishwas Chavan, P.W. 2; Shivaji, P.W. 3. Other witnesses were examined on 2nd February, 1992. On 6/2/1992, he arrested accused No.2. On 7/2/1992 the appellant was arrested. The blood stained white shirt and a white Pyjama (article 9 and

10) from the person of the accused-appellant were also seized and seizure panchanama was drawn (Exh.29). The supplementary statement was recorded on 9/2/1992. The property and articles were sent to the Chemical Analyser and the same was received vide Exh. 36 and 37. The prosecution, as per the letter Exh.23 to Subhash Dahiwal (PW7), (Special Judicial Magistrate) (SJM) requested to hold the identification parade. It was also informed to the SJM to record the confessional statement of the accused-appellant in Cr.No. 45/1992. The SJM, by it's letter, instructed to keep the appellant present, for recording statement on 9/3/1992. After completing all the formalities, and essential questionings, recorded the statement of the appellant, Exh. 24. The SJM, thereafter, gave 24 hours time for the reflection and remanded the appellant to Magisterial custody. On 10/3/1992, at about 12.10 noon, all the necessary questions and answers were exchanged. There was no complaint or any objection about any kind of inducement, threat or promises by the police. After due satisfaction, the SJM recorded and endorsed the confessional statement and obtained the thumb-impression of the appellant (Exh.25). The necessary certificates were issued (Exh.,26) In the identification parade, as

main two witnesses were not available, therefore, they could not be produced. Mr. Jekab, who was present along with P.W. 2 and P.W. 3 could not be identified. On 30th April, 1992, the charge-sheet Exh.1 was submitted after completion of the inquiry and investigation.

4. Both the accused pleaded not guilty. Their defence was of total denial. The prosecution has examined 9 witnesses. No defence witness was examined.

5. The learned Sessions Judge, after considering the material, as well as, the confessional statement of the appellant, by the impugned judgment and order acquitted accused No.2 for want of evidence but convicted the appellant. The appeal was admitted on 19/7/1995. The appellant is released on bail.

6. Heard learned Counsel, Mr. A.B. Vagyani appearing for the appellant and the learned A.P.P. Mr. D.R. More for the Respondent/State. The contention of the appellant’s Counsel, are; that the confessional statement of the appellant, for want of corroboration and supporting material cannot be the basis for the

conviction; the eye witnesses PW 2 and PW 3 unable to identify the appellant, as they could not see the face at the time of incident; the Supreme Court Judgment **AIR 1969 S.C. 422 (Nishi Kant Jha V. State of Bihar)** was misconstrued; the mandatary procedures as contemplated under section 164 of Cr.P.C., section 24 of Evidence Act, and the guide lines as provided, before recording confessional statement, were not complied with; the other witnesses turned hostile including P.W. Indrajit (arrest panchanama) and P.W.1, suman (wife of the deceased); there was no motive of the appellant to murder the deceased; The statement belatedly recorded. therefore, unreliable. The learned Judge, therefore, wrong in convicting the appellant. There is nothing to connect the accused with the crime, and benefit of doubt should be given also to the appellant. Lastly, prayed for leniency, as the appellant is not habitual criminal. The learned Counsel appearing for the appellant has referred the following case laws;

1. AIR 1969 S.C. 422 (Nishi Kant Jha V. State of Bihar. (2) AIR 1956 S.C. 217 (Aher Raja Khima V. State of Saurashtra). (3) 1982 Cri.L.J. 216 (State Assam V. Rabindra Nath

Guha). (4) 1972 Cri. L.J. 961 (Hari Ram V. State). (5) 1994 Cri.L.J. 3139 (Kartar Singh V. State of Punjab) (6) AIR 1978 S.C. 1248 (Shankaria V. State of Rajasthan)

7. The learned A.P.P. resisted the contentions raised by the Counsel for the appellant and supported the impugned judgment and order and also relied on **AIR 1999 S.C. 2640 (State of Tamil Nadu V. Nalini and others). Para 405;** to support that there was no complaint about the police threat or coercion

8. We have also gone through the record and after reappreciation of the material, as well as, the evidence, we are convinced that the appellant has committed the offence in question. The judgment and order, therefore, need no interference. Our reasoning to maintain the order is as follows;

9. There is no dispute to the contents of panchanama Exh. 9, inquest panchanama Exh.10, panchanama of arrest, seizure of clothes, as those documents were produced by the prosecution under section 294 of Cr.P.C. and were admitted in evidence by the

appellant. P.W. 6 Dr. Milind Wagale, who was on duty at the relevant time at Sasoon Hospital, had conducted the post-mortem examination on the dead body of the deceased and recorded in the post mortem report Exh.21 that, "cause of death in my opinion was due to head injury" "the external injury No. 1 could be caused by forceful blow of stone on the head." "The stone blow on the right side of the scalp as I found as external injury No.1 could cause subdural haemorrhage over occipital lobe and subaroid haemorrhage". "The external injuries Nos. 1 to 5 are the head injuries. The injuries No. 4 and 5 could be caused due to the internal bleeding below the scalp. The external injuries 2 and 3 are possible by the stone blows." "The external injuries 6 to 18 except 9 and 17 are possible not by bare kicks, but by kicks with some foot wear. The injury No. 9 and 17 were possible by some sharp object. The fracture on left libia and fibula corresponding to external injury No. 16 could be caused by blow of hard object such as stone. The internal injury on the head corresponding external injury Nos. 1 to 5 were sufficient in the ordinary course of nature to cause death." In the Cross-examination also P.W. 6 has stated that the external injuries No. 1 to 18 are

possible by vehicle but in that case there would be grease with abrasion which were not in this case. " The injuries No. 7 to 14 are not possible even if the person is dragged by the vehicle." After going through the evidence as well as post-mortem report there remained no doubt that the death of the deceased was homicidal and caused by heavy blow of the stones on the head. The inquest panchanama Exh.10 and panchanama of scene Exh.9 further supports the above fact. The blood stained white shirt and white payjama of the appellant were seized. The blood stained stones weighing 10 kgs and other about 1-1/2 Kgs., the driving licence of the deceased and blood stained earth were seized from the spot. The inquest panchanama supports the prosecution case, read with the evidence of P.W. 6, Dr. Wagale and post-mortem report and panchanama, that the deceased was mercilessly beaten by the stones, beside the Chankya Housing Society, Pune. As per inquest panchanama the body of the deceased was naked. The Chemical Analysers reports Exh.36 also supports the prosecution case, apart from the evidence of P.I. P.W.9 that, Article 1,2,3 and 8 were stained with blood of "B" group. The blood of the appellant Dashrath is of "O" group, Exh.37. On the deceased clothes (article 1 and 2) blood group "B" was

detected as per the C.A. report Exh. 36. The stones recovered/seized from the scene of offence, had human blood. The blood group of the deceased was "B".

10. P.W. 8,(Indrajit) even though, was declared hostile, in his cross-examination had admitted his signature on the arrest and seizure panchanama (Exh.29). The evidence of P.I. Mundhe, P.W.9 also supports the panchanama. When the appellant was arrested on 7/2/1992, he was wearing old blood stained white shirt (Art.8) and white Pyjama articles 9. The accused was arrested under panchanama Exh.29. The duly proved C.A. reports Exh.36 and 37 support the prosecution case, as human blood group "B" stains were found on the articles 1,2,3 and 8. Therefore, this also corroborates the prosecution case and involvement of the appellant and connect the appellant with the crime in question.

11. The next important aspect to support the order of conviction is, two witnesses P.W. 2 (Vishwas) and P.W. 3 (Shivaji). Both these witnesses have corroborated that on 30th January, 1992, at about 11 p.m. in front of Chankya Housing Society, near Deep Bunglow square, they were sitting near bonfire. P.W.

3, Shivaji when went for urination, saw the fighting which was going on. He informed about the same to Vishwas, P.W.2. Both therefore, went near the place of occurrence. Both these witnesses, saw that one man was beating another man. The victim had fallen on the ground, was wearing black pant and whitish shirt (panchanama Exh.9). The assailant was wearing white shirt and white pyjama. The assailant firstly beat the deceased with fists and kicks and secondly took out the clothes of the victim and lastly hit the victim with the stones. Thereafter the assailant took up the bicycle and went away. P.W. 3 has stated that the assailant hit the victim with stone. P.W. 3 Shivaji saw the fighting and he informed also Vishwas P.W. 2. A Welder Jekab also came there. The learned Advocate for the appellant referred the evidence P.W.2 and relied upon the statement that " since I had not seen the face of the appellant, I am not able to identify him" he also relied on the statement of P.W.3 Shivaji " I am not able to identify the assailant". Therefore, contended that those two witnesses cannot said to be eye witnesses of the incident and even though, they had noted the incident, they were unable to identify the appellant. The learned Counsel also argued that these are the

chance wintesses, therefore, cannot be relied upon. As noted in the present case, these two witnesses had witnessed the incident fully, but unable to identify the appellant. Both these witnesses have identified the clothes of the deceased and the accused, and corroborates the incident which was also supported by the other witnesses. The articles which were recovered from the spot also connect the same. The C.A. reports also supports the prosecution case, in so far as, blood stained clothes, and blood found on the spot, stones and on the clothes of the deceased, which were seized from the spot, apart from the driving licences with photographs of the deceased. The post-mortem report further supports, the injuries by the fist, kick blows and the stones.

12. The important connecting and corroborative aspect in the present case, is the confessional statement of the appellant Exh.24 & 25. We have noted that P.W. 2 and P.W. 3, were unable to identify the appellant, at the relevant time, even though they had witnessed, the whole incident. Both these witnesses nowhere mentioned about the presence of third person on the spot. The identification parade nowhere connect the

appellant with the crime, as these witnesses were not available for the identification parade. But still the appellant has made confessional statement. The said confessional statement was recorded by SJM PW.7. We have gone through the evidence of SJM and we have noted that he had followed all the essential and necessary formalities, before recording the confessional statement of the appellant on 9.3.1992. The confessional statement was recorded on the next date i.e. 10/3/1992. There was no objection of any kind raised by the appellant about any coercion, undue influence, inducement, threat or promises given by the police. Therefore, as recorded and, as noted from the record, we are also of the view that the confession given by the appellant-accused No. .1 was voluntary and without any threat or coercion and recorded as per the provisions of law. This confession in the facts and circumstances of the case, have corroborated other material evidence, therefore, the conviction can be based upon the same.

13. As we have noted the appellant had not admitted in this confessional statement that he had beaten and committed the murder of the deceased Chandrakant. This confession, is not fully corroborates the prosecution

case. The part of this statement, only corroborates, other prosecution evidence, specially, of P.W. 2 and P.W. 3. The appellant has confessed as under.

> "Pralhad Lakshman Wadkar had helped me to get employment at Maldhakka, Mangalwar Peth. He said to me that I may serve there temporarily and then he would help me to get employment at Bharat Forge Co. Then he used to come in the morning and in the evening at Maldhakka at the place of my work. I asked him not to come there. He said that he had a work with me. I asked him as to what was the work. He told me that one person was to be murdered, and that he would show me that person. I asked him as to what was the name of that person. He did not tell me. But he showed me the photo of a person who was to be murdered.
>
> I asked him as to why that person was to be murdered. Wadkar told me that, that person was always giving trouble to his wife and children. Accordingly, on 30/1/1992 the deceased man got down from the PMT bus at Simla office at about 9.30 p.m. and we took him by rickshaw near Chanakya Society near Deep Bungalow square. Wadkar, abused him and started beating. He said to the deceased that he would reach him home very well. The deceased was shouting as not to beat and that he had helped him much. That he had also kept the illicit relations with his wife. By seeing towards myself, deceased was saying 'O Pahilwan, please rescue', But I could not do anything. Then Wadkar threatened me and asked to take off the pant of the deceased. I presumed that the public would think that the thieves had robbed him and hence, I took off his pant. Then Wadkar threatened me that my work was over and I should go therefrom. If anything would happen he would tell my name. Accordingly, I boarded other rickshaw and went to Pashan. Wadkar stayed there only. I do not know what happened thereafter. All this had happened on 30/1/1992 at 11,.00 to 11.30 p.m.

> The above contents have been read over to me. They are true and correct. I am giving voluntarily this statement."

14. The basic link which was missing in the evidence of P.W. 2 and P.W. 3 was the identification of the appellant. Both these witnesses P.W. 2 and P.W. 3 have corroborated that on 30th January, 1992 one person was beating another person with kicks, fists and stones to another person. The clothes were removed by the assailant. P. W. 2 basically, stated that the assailant beat the deceased with stone. Both the witnesess P.W. 2 and P.W. 3 have stated that the assailant was beating and kicking the deceased. The appellant’s confessional statement corroborates the link that on 30/1/1992 that they took the deceased near Deep Bunglow, Pune and started abusing him and beating him. The appellant also confessed that as the accused No.2 asked him to take out the pant of the deceased. he took out his pant. The evidence of P.W. 2 and P.W. 3, read with the confessional statement of the appellant, there is a corroboration to the fact that the said assailant was no one else but the appellant, who was present at the scene of offence at the relevant time and killed the deceased with the stones.

15. The appellant in his confessional statement further made reference of the presence of the accused No.2. The appellant nowhere admitted the guilt or admitted the beating the deceased with fist, kick and stones blows. The appellant expressed his ignorance about the events, as he left after removing pant of the deceased. The appellant however, confessed that all these events happened of 30/1/1992 at about 11 to 11.30 p.m. near Deep bunglow square, near Chankya Housing Society. Pune. Now, therefore, the question is whether an incriminating part of the confession can be taken note of to convict the accused, if corroborated by other prosecution evidence and if yes to what extent. The conviction in the present case is rest upon the inculpatory part of the confession made by the appellant, which corroborates with the evidence of P.W. 2 and P.W. 3.

16. Original accused No.2 was acquitted, as there was no connecting circumstances or material to point out that accused No.2 was present at the relevant time along with the appellant. P.W. 2 and P.W. 3 no where made reference of any third person on the spot at the

relevant time. The involvement of accused No.2 therefore, by the appellant has remained uncorroborated and that resulted into acquittal of accused No.2. However, the inculpatory part and or the piece of inculpatory statement of the appellant, connect and corroborate, by the other witnesses, and therefore, the circumstances are sufficient to connect the appellant with the crime in question. As held also by the learned Sessions Judge, while convicting the appellant for the offence under Section 302 of IPC.

17. The Apex Court in **Nishi Kant V. State of Bihar, A.I.R. 1969,S.C. 422** (Constitutional Bench), after considering the earlier Apex Court's decision including **A.I.R. 1952 S.C. 343 (Hanumant V. State of Madhya Pradesh),A.I.R. 1952, 354 (Palvinder Kaur V. State of Punjab), 1964 (1) Cri.L.J. 730 (Narain Singh V. State of Punjab),** held that;

> "In this case the exculpatory part of the statement in exh.6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under S. 342 Cr.P.C. to the effect that he had received the injury in a

> scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October, 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and have a bath in the river Patro, the amount of bleeding and the washing of the blood-stains being so considerable as to attract the attention of Ram Kishore Pandey, P.W. 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post mortem report this knife could have been the cause of the injuries on the victim. In the circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Exh.6 the High Court had acted rightly in accepting the inculpatory, part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."

The Apex Court in **Nishi Kant** (Supra) on facts found following incriminating circumstances against the accused.

> (a) Only about two hours after the murder i.e. between 5 to 6 p.m. he was seen washing his blood-stained clothes on the bank of the river Patro.
>
> (b) At the time of his apprehension by Ram Kishore Pandey and others he was holding blood-stained exercise books, and other books some of the pages being blood stained.
>
> (c) He also had with him at that time a knife the length of the blade and the handle of which

was about 9".

(d) According to the medical evidence the injuries of the victim could have been caused by that knife which was in the possession of the appellant. One of the horizontal incised injuries i.e. injury No.6 was 5" X 2" X 3/4".

(e) The left hand of the respondent was noticed with a cut injury at the bank of the said river. The marks of other injuries on the body of the appellant were compatible with a scuffle with the victim in the compartment of the train.

(f) The explanation of the appellant with regard to the possession of blood stained clothes and articles and the injury on his body was not acceptable."

Therefore, the Apex Court, based upon the inculpatary part and incriminating circumstances, has drawn the conclusion in para 23, as referred above and maintained the order of High Court of the conviction and sentence. The appeal was accordingly dismissed.

18. In the present case, we have noted the evidence of P.W. 2 and P.W. 3 corroborates the part of the confessional statement of the appellant, and which supports the prosecution case to identify the appellant as the accused. The appellant corroborates the place, date and time of the i.e. 30/1/1992 at about 11 TO 11.30 p.m. near Chankya Housing Society, Deep bunglow square, Pune. The panchanama Exh.9 duly supports the

recovery of blood stained articles and stones. The blood found on the articles and stone corroborates as proved by the Chemical Analyser's report and by P.W. 9, Mundhe, and other evidence. The blood stained white clothes of the appellant, which were noticed by P.W.2 and P.W. 3, were also seized. The C.A. reports Exh.36 and 37 support the blood stain of group "B" of the deceased. The appellant's blood group is "O" as per C.A.report. The action of removal of the clothes by the appellant, of the deceased, was also noticed by P.W. 2 and P.W. 3. The missing link in the evidence of P.W. 2 and P.W. 3, is therefore, completed by the part-inclupatary statement (Exh.24 and 25) made by the appellant. This chain of events therefore, corroborates the prosecution case that the appellant was definitely present on the spot, at the relevant time of the occurrence. The death of the deceased as noted above and supporting evidence further corroborates the prosecution case, which pointed out that the appellant is guilty.

19. The additional factor which could be noted is that P.W. 1, Suman, wife of the deceased, nowhere supported the prosecution and she was declared hostile.

Suman, however, has admitted that accused No.2 and the deceased were friends. Accused No.2 used to visit their house. P.W. 5, Vijay Nimbalkar also supports the prosecution case, that accused No.2 had introduced the appellant as he was unemployed and also requested to arrange for service for him. This witness, Vijay, has stated that 2 or 3 months prior to the incident, appellant was employed with his master. Accused No.2 used to visit regularly to his master. The statement of this witness was recorded by police on 11/2/1992. As we have noted that the appellant, in his confessional statement, in first para confessed and made reference that Pralhad, accused No.2 helped the appellant to get the employment at Maldhakka, Mangalwar Peth. The appellant was working there on temporary basis. Accused No.2 had promised to get employment at Bharat Forge, company.The accused used to come to his working place, Maldhakka. Accused No.2 told him that he want to murder one person. Accused No.2 shown the appellant, photo of a person who was to be murdered. The appellant asked the reason for the same. Accused No.2, Wadkar told that he was giving trouble to his wife and children. This portion of the confessional statement of the appellant is also corroborated by the evidence of P.W. 5 and P.W.

1. This shows that the appellant and accused No.2 were friends. The appellant was temporarily employed by the accused No.2. The promises were also given for further employment. It also corroborates that accused No.2, had taken loan from the deceased and used to visit the residence of the deceased and P.W. 1. The illicit relations, as referred by the appellant in his confessional statement, was also mentioned by the deceased. This corroboration read with other corroborative materials which have come from the evidence of P.W. 2 and P.W. 3, P.W.1 and P.W. 8, apart from the proved documents on the record, we are also convinced that the prosecution has proved and able to connect the appellant with the crime. In this background the principle as laid down by the Apex Court in **Nishi Kant** (Supra) also covers the present case and conviction order passed by the Additional Sessions Judge, Pune is within the frame work of law and facts of the present case.

20. The additional circumstances, which cannot be over looked are that the statements of the witnesses were recorded by P.W. 9, on 1st February,1992, including of P.W. 2 and P.W. 3, who are the main

prosecution witnesses in the present case. The supplementary statement of Suman, P.W. 1 recorded on 9/2/1992. Accused No.2 was arrested on 6/2/1992 and the appellant was arrested on 7/2/1992. The confessional statement of the appellant was recorded on 10/3/1992. Therefore, it cannot be said that all the witnesses are brought up or chance witnesses, specially, P.W.2 and P.W. 3. Their presence at the relevant time cannot be said to be unnatural. These witnesses, were working in the nearby bunglow and therefore, at the relevant time, there sitting and chit-chating could not be said to be improbable. In our view these witnesses cannot be said to be chance witnesses. Their testimony is reliable.

21. The appellant has also contended that this confessional statement in question was recorded under threat, coercion, and promises by the police, as the letter was issued by the police to the Collector to record the confessional statement of the appellant and secondly, the appellant was in the custody of the police or jail authority when he was brought for recording confessional statement on 10/3/1992. The SJM could have noted this and therefore, could not answer in the cross-examination whether the police had access or not.

We have noted the whole confessional statement, and also that there was no objection of any kind raised by the appellant at the relevant time, before or after giving this confessional statement, about such threat, coercion, by the police. We have noted in his statement under Section 313 of Cr.P.C. that there was no such complaint made. The Judgment as cited by the appellant i.e. **Shankaria,** the Apex Court has observed in para 43 as under;

> "The facts in Sarwan Singh V. State of Punjab (AIR 1957 SC 637) (ibid) were entirely different. Therein, the accused who had visible marks of injuries was straightway brought by the police from its prolonged custody, and produced before the Magistrate who immediately thereupon recorded his confessional statement, while the Police Sub-Inspector remained outside in the verandah of the Magistrate's office. The Magistrate did not ask the accused how he came to be injured. It was in these circumstances that this Court held that the failure of the Magistrate to give adequate time to the accused to consider the matter, stamped it as unvoluntary."

The Apex Court in **Shankaria** (Supra), the facts and circumstances in that case observed, that the interval period need not be of minimum 24 hours. In that case, it was observed, 15 minutes interval, held to be sufficient between the preliminary questioning and recording of confession. The another case, as relied by

the defence Counsel, **1991 Cri. L.J. 269** (**Govinda Pradhan and another Vs. The State)**, is distinguishable on the fact itself, as in that case, the interval period was granted only 5 to 10 minutes for reflection. In the present case, as already recorded, before recording the confessional statement 24 hours was granted for reflection. The reliance on **1994 Cri. L.J. 3139 (Kartar Singh V.,State of Punjab)**, in the facts and circumstances of this case, it is also not helpful to the appellant, as already observed, that the confessional statement was recorded after following due procedure. We are of the view, that the confessional statement made was voluntary and corroborated by the other material evidence. Therefore, **A.I.R. 1956 S. C. 217 (Aher Raja Khima V. State of Saurashtra)**, para 11 supports the prosecution case. The Apex Court's decision in **Shankaria** (Supra), therefore, also supports the prosecution case on the principle of Section 164 of Cr.P.C., as confessional statement corroborated by independent evidence in the present case, also sufficient to prove the charges. This judgment also nowhere supports the case of appellant. In the facts and circumstances of the case, the Apex Court, observed and as relied by the learned A.P.P. in **State of Tamil**

Nadu V. Nalini in para 405, which supports the prosecution submissions and answer to the submissions raised by the appellant's Counsel.

> "We think sufficient time was given to the accused in the circumstances of the case form them to reflect, if they wanted to make confession. Merely because confession was recorded a day or so before the police remand was to expire would not make the confession involuntary. No complaint was made before the trial Court that confession was the result of any coercion, threat or use of any third degree methods or even playing upon psychology of the accused."

As noted above, in the facts and circumstances of the present case and for want of any objection or any such complaint on record, we see that the confessional statement recorded of the appellant was voluntary and the portion of inculpatory statement can be relied upon as corroborated by other material evidence and circumstances, to convict the appellant.

22. According to the appellant's Counsel, the motive was also missing in this matter to kill the deceased, as appellant had nothing to do with recovery or advance of the loan. The appellant had no relations with the wife of the deceased. However, as per his own confessional statement, there is a link of accused No.2 with the

appellant. P.W. 5 also corroborates that the appellant was unemployed and was temporarily working with the master of P.W. 5. The promise of employment was given by accused No. 2 to the appellant. The appellant, as unemployed, accused No.2 induced him to commit the crime. These connecting circumstances, also connect the appellant with the crime. There is no counter appeal by the State against the order of acquittal of the accused No.2. The appellant had involved accused No.2 in his confessional statement to the extent of beating and kicking before removing of the clothes of the deceased. The appellant expressed ignorance what happened thereafter. P.W. 2 and P.W. 3 however, connect the appellant to the extent that the person who was beating, kicking removed the clothes of the deceased, hit by the stones. In view of this, we are of the view, that there is a sufficient material to connect the appellant with the crime. Therefore, in the facts and cirsumstances of the case, it cannot be said that for want of proved motive, the appellant is entitled for the acquittal.

23. The learned advocate for the appellant, alternatively prayed for lenient view, as there was no criminal record of the appellant and in the facts and

circumstances of the case, as appellant was unemployed, accused No.2 induced him to commit such offence. Therefore, the benefit of doubt should also be extended to the appellant, as accused No.2 was already acquitted. After going through the material, as well as, contentions as raised, we find no case made out for acquittal. Since appellant is found guilty of offence of murder there is no question of awarding lesser punishment than inflicted by the learned Sessions Judge.

24. For the reasons recorded above, we are of the view, that in the facts and circumstances of the case and the material placed on the record, and in view of the reasoning given by the learned Sessions Judge, the prosecution has proved beyond reasonable doubt that the appellant has committed the murder of the deceased. The Judgment and order dated 4/7/1995, in Sessions Case No. 424/1992, passed by the Additional Sessions Judge, Pune, is confirmed and maintained. The appellant shall surrender to his bail bond forthwith. The appeal is dismissed.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]